

SERVED: December 31, 1992

NTSB Order No. EA-3766

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 30th day of December, 1992

_____)	
THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12836
v.)	
)	
DONALD W. MORSE,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The Administrator and the respondent have appealed from the oral initial decision Administrative Law Judge Jerrell R. Davis rendered in this proceeding on November 19, 1992, following a two-day evidentiary hearing.¹ By that decision the law judge affirmed all of the charges against the respondent in the Administrator's November 3, 1992 Amended Emergency Order of

¹An excerpt from the hearing transcript containing the initial decision is attached.

Revocation, but reduced the sanction to a 90 day suspension of respondent's private pilot and mechanic certificates. On appeal, the Administrator contends that the law judge erred in reducing the sanction from revocation and the respondent contends that the law judge, for a wide variety of reasons, erred in sustaining any of the charges. Although we find, as discussed below, that some of the charges upheld by the law judge should have been dismissed, we conclude, nevertheless, that the law judge should have affirmed the revocation of respondent's certificates.

The Amended Emergency Order of Revocation alleged, in pertinent part, the following facts and circumstances concerning the respondent:

1. You are now, and at all times mentioned herein, were the holder of U.S. Mechanic Certificate No. 532501677 with Airframe and Powerplant ratings and U.S. Private Pilot Certificate No. 532501677 with Airplane Single Engine Land rating.
2. At all times mentioned herein, you were the registered owner of civil aircraft N95J, a G44 Grumman Widgeon.
3. On or about March 27, 1992, you authorized the operation of civil aircraft N95J, a G44 Grumman Widgeon, on a flight from Biggin Hill, United Kingdom to Cardiff, United Kingdom.
4. Incident to the flight referenced in paragraph 3 above, the pilot of civil aircraft N95J diverted the aircraft to and made a hard landing at Blackbushe Airport, after the aircraft lost power in both engines.
5. At the time of the flight mentioned in paragraph 3 above, the annual inspection performed on February 22, 1991, on civil aircraft N95J had expired.
6. By reason of the fact that the annual inspection for civil aircraft N95J had expired, the airworthiness certificate for the aircraft was no longer effective.

7. On March 9, 1992, you inspected civil aircraft N95J, but did not certify that the aircraft was in an airworthy condition or approve the aircraft for return to service.

8. Incident to the inspection that you conducted, as mentioned in paragraph 7 above, you made the following entry in the maintenance records for civil aircraft N95J:

A ferry permit was issued for this aircraft from U.K. to Deer Park, WA. I have inspected the above mentioned aircraft. Ferry Pilot for the above mentioned flight John Powell.
End.

9. At the time of the flight mentioned in paragraph 3 above, civil aircraft N95J had been issued a special flight permit for a ferry flight from Bangor, Maine to Deer Park, Washington.

10. At no time mentioned herein had civil aircraft N95J been issued a special flight permit for any flights in United Kingdom airspace.

11. By reason of the facts and circumstances set forth in paragraphs 7 through 10 above, you made a fraudulent or intentionally false statement in the maintenance records for civil aircraft N95J, in that no ferry permit was issued for civil aircraft N95J for a flight from the U.K. to Deer Park, WA.

12. By reason of the facts and circumstances set forth in paragraphs 7 through 10 above, you inspected civil aircraft N95J and failed to make the appropriate entry in the maintenance records, in that you:

- a. failed to state the type of inspection and a brief description of the extent of the inspection;
- b. failed to state the aircraft's total time in service;
- c. failed to state whether the aircraft was approved or not approved for return to service.

13. By reason of the facts and circumstances set forth in paragraphs 7 through 12 above, you failed to perform the inspection of civil aircraft N95J, mentioned in paragraph 7 above, in a manner so as to determine

whether the aircraft, or portions thereof under inspection, met all applicable airworthiness requirements.

14. The Senior Inspector of Air Accidents - Engineering for the Department of Transport, United Kingdom inspected civil aircraft N95J after its landing at Blackbushe Airport and discovered that the aircraft was not in an airworthy condition, in that:

- a. large corrosion holes were present in the tailplanes [horizontal stabilizers] and in one of the fuel tanks;
- b. the fuel tanks were experiencing substantial, long term leakage;
- c. the fuel crossfeed valve was seized and the rudder trim had been cross-rigged;
- d. a make-shift label consisting of a piece of black self adhesive tape had been placed over the rudder trim sense placard in the cockpit;
- e. a right engine magneto was permanently "live;" and
- f. the landing gear system was unserviceable.

15. On May 1, 1992, FAA inspectors conducted an inspection of civil aircraft N95J and discovered the following discrepancies:

- a. the Emergency Locator Transmitter (ELT) was installed backwards (the transmitter was pointing aft not forward);
- b. the ELT was overdue for inspection since June 1988;
- c. the Compass card was blank; and
- d. severe pitting, exfoliated, or intergranular corrosion on several parts of the aircraft, including the nose of the fuselage; the left and right main landing gear struts and braces; the left and right engine accessory sections; the left and right fuel tank access bolts; the left and right wing pylon pontoon cable brackets; the left

and right horizontal stabilizers; the tail wheel box; the left and right wing access panels; the left and right engine fuel pumps; the left and right fuel tank sump drains; the left and right fuel pump motors and cannon plugs; the left and right main landing gear up locks; the left and right wing panels; and the left and right wing faring panels.

16. By reason of the facts stated above, you authorized the operation of civil aircraft N95J on a flight from Biggin Hill, United Kingdom to Cardiff Airport, United Kingdom when the aircraft did not have a current airworthiness certificate or a special flight permit for this flight.

17. By reason of the facts and circumstances set forth above, you authorized the operation of civil aircraft N95J when the aircraft was not in an airworthy condition.

18. By reason of the facts and circumstances set forth above, you authorized the operation of civil aircraft N95J when, within the preceding 12 months, an annual inspection in accordance with Part 43 of the Federal Aviation Regulations (FAR) had not been performed on said aircraft and said aircraft had not been approved for return to service by a person authorized under Section 43.7 of the FAR.

19. By reason of the facts and circumstances set forth above, you as the owner of civil aircraft N95J, failed to have that aircraft inspected in accordance with Subpart E of Part 91 of the FAR.

20. By reason of the facts and circumstances set forth above, you, as the owner of civil aircraft N95J, failed to ensure that appropriate entries had been made in the aircraft maintenance records indicating that the aircraft had been approved for return to service.

21. At the time you authorized the operation of civil aircraft N95J on the flight described in paragraph 3 above, you had been issued the second duplicate (pink) copy of the Aircraft Registration Application and had not yet been issued a Certificate of Registration for civil aircraft N95J.

22. By reason of the facts and circumstances stated in paragraph 21 above, you authorized the operation of civil aircraft N95J on a flight outside the United States when you only had been issued the "pink" copy

registration application.

Based on these allegations, the Administrator maintained that respondent had violated sections 91.703(a)(2), 91.405(a) and (b), 91.409(a), 91.203(a), 43.11 and 43.12 of the Federal Aviation Regulations, FAR, 14 CFR Parts 91 and 43.² As noted, the law

²FAR sections 91.703(a)(2), 91.405(a) and (b), 91.409(a), 91.203(a), 43.11 and 43.12 provide, in relevant part, as follows:

"§91.703 Operations of civil aircraft of U.S. registry outside of the United States.

(a) Each person operating a civil aircraft of U.S. registry outside of the United States shall--

* * * * *

(2) When within a foreign country, comply with the regulations relating to the flight and maneuver of aircraft there in force....

§91.405 Maintenance required.

Each owner or operator of an aircraft--

(a) Shall have that aircraft inspected as prescribed in subpart E of this part and shall between required inspections, except as provided in paragraph (c) of this section, have discrepancies repaired as prescribed in part 43 of this chapter;

(b) Shall ensure that maintenance personnel make appropriate entries in the aircraft maintenance records indicating the aircraft has been approved for return to service....

§91.409 Inspections.

(a) Except as provided in paragraph (c) of this section, no person may operate an aircraft unless, within the preceding 12 calendar months, it has had--

(1) An annual inspection in accordance with part 43 of this chapter and has been approved for return to service by a person authorized by §43.7 of this chapter....

§91.203 Civil aircraft: Certifications required.

(a) Except as provided in §91.715, no person may operate a civil aircraft unless it has within it the following:

* * * * *

(2) An effective U.S. registration certificate issued to its owner or, for operations within the United States, the second

judge sustained all of the violations alleged. For the reasons discussed below, we disagree in part with his judgment in the matter.³

Several of the Administrator's charges are premised on the theory that respondent operated an aircraft that did not meet various regulatory requirements because the admittedly

(..continued)

duplicate copy (pink) of the Aircraft Registration Application as provided for in §47.31(b), or a registration certificate issued under the laws of a foreign country.

§43.11 Content, form, and disposition of records for inspections conducted under Parts 91 and 125 and §§135.411(a)(1) and 135.419 of this chapter.

(a) Maintenance record entries. The person approving or disapproving for return to service an aircraft, airframe, aircraft engine, propeller, appliance, or component part after any inspection performed in accordance with Part 91,123,125, §135.411(a)(1), or §135.419 shall make an entry in the maintenance record of that equipment containing the following information:

(1) The type of inspection and a brief description of the extent of the inspection.

(2) The date of the inspection and aircraft total time in service.

(3) The signature, the certificate number, and kind of certificate held by the person approving or disapproving for return to service the aircraft, airframe, aircraft engine, propeller, appliance, component part, or portions thereof....

§43.12 Maintenance records: Falsifications, reproduction, or alteration.

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false entry in any record or report that is required to be made kept, or used to show compliance under this part...."

³We find no merit in respondent's argument that the law judge erred in permitting the Administrator to amend the complaint so as to charge a violation of section 91.203. An allegation supporting such a charge was made in the complaint (see paragraphs 21. and 22.) and evidence in support of the allegation was introduced. A conforming amendment of the complaint thus produced no prejudice to respondent.

unairworthy aircraft, which had a ferry permit valid only for flight in U.S. airspace, was flown in the U.K. Respondent, in his appeal, argues that he should not be held to have "operated" the aircraft, essentially because his ferry pilot assertedly did not, as he was instructed to do, obtain all necessary local authorizations, such as necessary foreign ferry permits, for the flight and contact the respondent before actually getting underway. Notwithstanding this contention, to which the Administrator has not directly responded, we think respondent "operated the flight within the meaning of 14 CFR §1.1, which states that "operate, with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose...of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise)."

It is not disputed that the respondent was the owner of the aircraft and that it was flown by an individual he hired consistent with respondent's intent that the aircraft be brought back to Deer Park, WA, for restoration. In other words, the ferry pilot's use of the aircraft was both caused and authorized by respondent's employment of him. We think this is a sufficient predicate under the FAR for finding that respondent operated the flight, whether or not the ferry pilot correctly or adequately discharged the obligations of his employment.⁴

⁴We do not mean to suggest, however, that breaches of a ferry pilot's employment obligations that exposed an owner to enforcement liability would not be relevant to the determination of sanction in some cases.

Although we are persuaded that respondent did operate the subject flight, we find merit in his contention that the Administrator did not prove a violation of section 91.703(a)(2); that is, operation in a foreign country of a U.S. aircraft that did not comply with the foreign country's regulations. While British law undoubtedly proscribes the operation of unairworthy aircraft in United Kingdom airspace, wherever they might be registered, the Administrator had the burden of establishing what U.K. law required in the circumstances by showing that civil aircraft N95J did not have a current and effective U.S. airworthiness certificate and that the ferry permit that the respondent had obtained was not valid in U.K. airspace. That burden was not met.

We also agree with the respondent that a violation of section 43.11 was not established. That regulation by its terms applies only to inspections under Parts 91, 125, and 135.⁵ We find no merit in the Administrator's argument that respondent's inspection of the aircraft under Part 21, for purposes of obtaining a ferry permit, should be judged under the standards applicable to a Part 91 inspection because the ferry permit was not valid in the U.K. We do agree with the Administrator, however, that in light of the invalidity of the ferry permit in

⁵Contrary to respondent's argument, section 43.12 applies not just to records required under Part 43, but to records relating, inter alia, to maintenance. See section 43.1. Since maintenance embraces inspections (14 CFR § 1.1), section 43.12 reaches false logbook entries made in connection with an inspection of an aircraft under any provision of the FAR, including Part 21.

the United Kingdom, the aircraft could not lawfully be operated there without compliance with the maintenance performance and recordation requirements [i.e., an annual inspection] set forth in sections 91.405(a) and (b).

It is not clear from the Administrator's complaint whether the falsification charge under section 43.12 is predicated solely on the essentially undisputed fact that, contrary to the logbook entry respondent made, the ferry permit issued to respondent was not valid for the airspace between the U.K. and the United States, or whether it also relates to the evidence the Administrator introduced to show that the aircraft was not safe for flight, as the logbook entry at least inferentially suggests.

In any event, we will not consider any of the Administrator's evidence on the latter point, for we agree with the respondent that the law judge unfairly limited his ability to contradict that evidence. We do not agree with the law judge that respondent was not entitled to put on expert testimony as to the condition of the aircraft at the time of the crash landing, simply because his experts, unlike the FAA's, did not have an opportunity to inspect the aircraft until after it had been disassembled and shipped to Deer Park.⁶

⁶We find no merit in any of respondent's other contentions related to the fairness of the hearing he was afforded or to the law judge's conduct of the hearing. Moreover, our decision to disregard evidence concerning whether the aircraft was safe for the flight when the ferry permit was issued moots his challenge to the law judge's admission of assertedly privileged information bearing on an insurance company's reasons for denying coverage after the crash.

The law judge concluded that the respondent had intentionally falsified the aircraft logbook by indicating that a ferry permit from the U.K. to Deer Park had been issued when in fact a permit valid only in U.S. airspace had been issued.⁷ While the law judge, although having rejected as a matter of credibility the defense of innocent mistake, appears not to have fully understood why respondent purposefully would make such an entry, given his asserted understanding that the FAA inspector with whom he had been dealing could not issue a permit of such breadth, we think it unnecessary to speculate as to respondent's motivation. It is enough that the respondent knew the entry was untrue and that the entry could have misled others, such as the aviation authorities in countries along the planned route of flight from the U.K. to the U.S. (Greenland, Newfoundland and Canada), into believing that whatever permission that might have been necessary to make the complete flight had been obtained.

On the issue of sanction, we agree with the Administrator that respondent's intentional falsification of the logbook warrants revocation. The law judge cited no Board precedent in support of his reduction of sanction to a 90-day suspension, and respondent has identified no reason which would justify imposing a lesser sanction. In any event, we think that a mechanic who knowingly misstates in a logbook the scope of what amounts to an

⁷Respondent made the entry in the logbook the day before he had actually seen the permit, but with full knowledge that it would only cover U.S. airspace. He did not correct his entry when he picked up the permit.

exemption from various airworthiness requirements thereby demonstrates that he lacks the non-technical qualifications required to be the holder of either a pilot or a mechanic airman certificate. An individual who does not ensure the scrupulous accuracy of his representations in records on which air safety critically depends cannot be said to possess the necessary care, judgment, and responsibility.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The respondent's appeal is denied;
3. The initial decision is affirmed to the extent it is consistent with this opinion and order and is reversed to the extent it is not; and
4. Except with respect to the charges under FAR sections 91.703 and 43.11, the Amended Emergency Order of Revocation is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.